Supreme Court, U. S.
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NO. 80-5058

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

DAVID LEVELL W., a minor,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

The issue is whether petitioner's Fourth Amendment rights were violated when police officers took him from his home to the police station for questioning after petitioner's mother told the officers to take petitioner and also told petitioner to accompany the officers.

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OPINION BELOW

On March 18, 1980, the Court of Appeal of the State of California, Second Appellate District, Division Four, one justice dissenting, rendered on opinion herein in Case 2d Crim. No. 35263, affirming the judgment of the Juvenile Court of Los Angeles County Superior Court. The Juvenile Court had sustained a petition which alleged that petitioner had committed the felony of burglary, in violation of California Penal Code section 459. On April 7, 1980, the same Court of Appeal issued an order denying petitioner's petition for a rehearing. Copies of the opinion of the Court of Appeal and the order denying a rehearing are contained in Appendices A and B to the petition for writ of certiorari filed with this Honorable Court by petitioner.

On May 14, 1980, the Supreme Court of the State of California denied petitioner's petition for hearing without opinion. A copy of the order of denial is contained in Appendix C to the petition for writ of certiorari.

The opinion of the Court of Appeal was originally published at 103 Cal.App.3d 469. Pursuant to California Rules of Court, Rule 976, the California Supreme Court ordered the opinion depublished on July 18, 1980. A copy of the depublication order is attached hereto as an Appendix.

JURISDICTION

The ground for jurisdiction of this Honorable Court is set forth on page 2 of the petition.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED IN THE CASE

Respondent cites the following constitutional provisions and statute in its Argument:

1. The United States Constitution, Amendment IV, provides in pertinent part that:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, ..."

2. The United State Constitution, Amendment XIV, provides in pertinent part that:

". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . . ."

3. California Penal Code section 836, provides in relevant part:

"A peace officer . . . may . . . without a warrant, arrest a person:

". . . .

"2. When a person arrested has committed a felony, although not in his presence.

"3. Whenever he has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed."

STATEMENT OF THE CASE

On March 1, 1979, Tommy Harris lived at 706 East 48th Street, apartment 1, in Los Angeles. He left his apartment at about 5:00 p.m. that day after the locking premises. He returned home about 10:00 p.m. the same day and saw that the bars on one of his windows had been cut off and that the window pane was broken. He also determined that a box of change containing about $10 to $20 had been taken from inside his apartment. (RT 34-35.)

After Mr. Harris had determined that the box of change was missing from his apartment, he called the police. He subsequently told the police what had been taken from his

apartment. (RT 36.)

Mr. Harris had not given petitioner or another young man named Cornell permission to be in his apartment on March 1, 1979. Prior to that date, Mr. Harris had been acquainted with petitioner. Both petitioner and the young man named Cornell had been inside Mr. Harris' apartment before the date in question. (RT 35-36.)

Gregory Johnson is a City of Los Angeles police officer. On March 8, 1979, Officer Johnson and his partner Officer Tyler were contacted by Los Angeles Police Officer Tietgen. Officer Tietgen told Officers Johnson and Tyler that he had been in contact with the mother at a residence at 674 East 48th Street in Los Angeles concerning one of her children who allegedly had been involved in the burlary of a house down the street. Officer Tietgen stated that the mother was supposed to bring her son to the Newton Street Police Station the day before but she had failed to do so. Therefore, Officer Tietgen asked Officers Johnson and Tyler to go to 674 East 48th Street and attempt to contact the mother to find out when she would bring her son to the station. (RT 38-39, 54.)

After speaking with Officer Tietgen, Officers Johnson and Tyler drove to the residence at 674 East 48th Street in Los Angeles. They arrived there about 8:00 a.m. They were in uniform and drove a marked police vehicle. (RT 38-39.)

Officers Johnson and Tyler walked up to the front door of the residence and knocked. A boy who appeared to be ten to twelve years old answered the door. The officers told the boy who they were and said that they would like to speak with the boy's mother. The boy told the officers to wait a minute and he then left the front door. About a minute later the boy returned to the front door and told the officers, "My mother wants you to

come in." The officers then entered the residence. (RT 40-41.)

The officers followed the boy into a bedroom where the boy said his mother was. Upon entering the bedroom, Officer Johnson saw a woman lying in bed. The boy said the woman was his mother. Officer Johnson then told the woman that he and his partner were there to talk to her about her son who was supposed to have come down to the Newton Street Police Station the day before. Officer Johnson said they were wondering why the woman had not brought her son to the station the day before and they wanted to know when she was going to bring him. The woman said her car had broken down and she was unable to bring in her son. Officer Johnson asked where the woman's son was. The woman pointed to another bed in the same room and said, "He's there." Officer Johnson observed that petitioner was in the other bed and was covered with a sheet. Officer Johnson asked petitioner's mother whether she could bring petitioner to the station that same day. Petitioner's mother replied that her car was still not working. She looked over to petitioner and said, "David, wake up." Petitioner then starting getting out of bed. (RT 41-42.)

Officer Johnson and his partner continued talking with petitioner's mother about when she would be able to bring petitioner to the station. Petitioner's mother said, "Well, you officers are here. You can take him down." Petitioner's mother also said she had been having trouble with petitioner. She stated that if he had been involved in the burglary under investigation she wanted to know about it because she was going to contact the probation officer and she did not want petitioner back in the house. (RT 43.)

Petitioner's mother told the officers to take petitioner to the police station. She also told petitioner to get out of bed and get dressed because the officers were waiting for him.

Petitioner got out of bed. His mother told him to hurry up and get going. Petitioner got dressed. Petitioner then exited from the house and got into the police car with the officers. The officers never told petitioner he was under arrest. After petitioner got into the police car, Officer Johnson handcuffed him because he did not want to take a chance that petitioner might escape or jump out of the car while it was in motion. (RT 43-44.)

Officer Johnson and his partner drove petitioner to the Newton Street Police Station. After arriving at the station, Officer Johnson advised petitioner of his constitutional rights. Petitioner said he understood his constitutional rights. He waived his rights and said he did not want his parents present during questioning. Petitioner was also advised of his constitutional rights by Officer Tietgen at the station. Petitioner told Officer Tietgen that he understood his rights and that he waived them. (RT 45-49, 57-59.)

After petitioner had been advised of and waived his constitutional rights, he said that he and a boy named Cornell had used bolt cutters to cut the bars off the window at Tommy Harris' apartment and that Cornell then went through the window to look for marijuana and stuff while petitioner remained outside as a lookout. Petitioner related that thereafter Cornell exited the apartment through the window carrying a cigar box full of quarters, pennies, nickles and dimes. Petitioner and Cornell then went to the liquor store at 51st and Avalon where they cashed in the coins. Cornell subsequently took the bolt cutters and went to his "old lady's" house and petitioner went home. (RT 49-50.)

After petitioner had waived his rights, Officer Tietgen asked him if he knew what right and wrong were and whether he

knew that taking something from someone else is wrong. Petitioner replied, "Yeah, I know it's wrong. It's petty theft." Petitioner further told Officer Tietgen that someone else had broken into the victim's house, that there were bars on the window of the victim's house and that the house was stucco. (RT 54, 58-59.)

SUMMARY OF RESPONDENT'S ARGUMENT

The Petition for Writ of Certiorari should be denied. Petitioner's mother had legal authority to give the police officers permission to take petitioner to the police station for questioning. Moreover, petitioner manifested his consent to accompanying the officers to the station. Therefore, it was proper for the officers to take petitioner to the station and evidence of the confession petitioner made at the station was admissible.

ARGUMENT

THE POLICE OFFICERS LAWFULLY TOOK PETITIONER TO THE POLICE STATION

Petitioner contends that his mother had no legal authority to consent to the police taking him to the police station since the police had neither probable cause nor a warrant to arrest him. Therefore, petitioner maintains his being taken from his house to the police station by the police officers constituted an unlawful arrest in contravention of his Fourth Amendment right not to subjected to an unreasonable seizure of his person. (Petn. 6-11.) Respondent disagrees and submits, for the reasons set forth below, that the police officers acted lawfully by taking petitioner from his home to the police station.

It is true that the police officers did not have a warrant for petitioner's arrest at the time they took him from

his home to the police station. It is also true that the prosecution did not establish at petitioner's adjudication hearing that the police then had probable cause to arrest petitioner without a warrant. (See Cal. Pen. Code, § 836; RT 54-57.) However, Officers Johnson and Tyler nevertheless lawfully took petitioner from his home to the police station for questioning because, contrary to petitioner's assertion, petitioner's mother had lawful authority to instruct the officers to take petitioner to the police station.

It was only because petitioner's mother's car had broken down that she had not previously brought petitioner to the police station and was unable to bring him to the station on the date the officers came to her and petitioner's house. There was no other reason. (RT 42.) In the exercise of her parental right to care for, discipline and control petitioner's upbringing and behavior, a liberty interest protected by the due process clause of the Fourteenth Amendment to the United States Constitution, petitioner's mother herself lawfully could have brought petitioner to the police station at any time she saw fit. Consequently, there was nothing unlawful or improper about her telling Officers Johnson and Tyler to take petitioner to the station and her telling petitioner to accompany the officers.[1/]

Even where there is an invasion of a protected freedom, the power of the state to control the conduct of children reaches beyond the scope of its authority over adults. (Ginsberg v. New York (1968) 390 U.S. 629, 638; Prince v. Massachusetts (1944) 321 U.S. 158, 170.) Furthermore, parents have powers greater than those of the state to curtail their minor child's

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1. At the time petitioner's mother told the police to take petitioner to the station, petitioner was 13 years old. (CT 8.)

exercise of the constitutional rights the child may otherwise enjoy; a parent's own constitutionally protected liberty includes the right to bring up his or her children (Meyer v. Nebraska (1923) 262 U.S. 390, 399), and to direct the upbringing and education of his or her children. (Pierce v. Society of Sisters (1925) 268 U.S. 510, 534-535.) As against the state, this parental duty and right is subject to limitations only if it appears that parental decisions will jeopardize the health and safety of the child, or have a potential for significant social burdens. (Wisconsin v. Yoder (1972) 406 U.S. 205, 234.) As noted by this Honorable Court in Prince v. Massachusetts, supra (1944) 321 U.S. 158, 166, "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."

As this Court also recently recognized, this nation's jurisprudence historically has reflected Western Civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is the mere creature of the state and, on the contrary, asserted that parents generally have the right, coupled with the high duty, to recognize and prepare their children for additional obligations. The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has been recognized that natural bonds of affection lead parents to act in the best interests of their children. (Parham V. J. R. (1979) 442 U.S. 584, 602.)

In the case at bench, petitioner's mother, in the

exercise of her federal constitutional right as well as her moral duty and legal responsibility to control petitioner's upbringing, gave the police permission to take petitioner to the police station for questioning. This action by petitioner's mother was eminently reasonable under the circumstances and was not an action such as to jeopardize petitioner's health and safety but rather was in petitioner's best interest. Giving the police permission to take petitioner to the police station for questioning was a reasonable and necessary extension of petitioner's mother's authority and control over petitioner's moral training, health and well being.

In taking petitioner to the police station, the police officers merely acted as an agent of petitioner's mother by following her instructions. Therefore, the officers acted lawfully and reasonably by taking petitioner from his home to the station and did not illegally arrest or detain petitioner.

The action of the police officers in taking petitioner to the police station was lawful for the additional reason that petitioner manifested his consent to accompanying the officers. The evidence was undisputed that the police officers never asked or commanded petitioner to accompany them to the police station. Rather, after the officers, while in petitioner's and his mother's home, had asked petitioner's mother when she would be able to bring petitioner to the police station for purposes of investigation, petitioner's mother said that since the officers were there at the house they could take petitioner to the station. She also told petitioner to get out of bed, to get dressed, to hurry up and to go with the officers. Petitioner then got dressed and accompanied the officers to the station. (RT 42-44.)

In the absence of any evidence whatsoever that

petitioner objected to going to the police station with the officers[2], the only rational conclusion from the evidence presented below is that petitioner voluntarily consented to accompanying the officers. Just as a person's consent to a search by the police obviates the necessity for a search warrant or probable cause (Schneckloth v. Bustamonte (1973) 412 U.S. 218, 219), so too should the consent of a person to being taken to the police station by the police for investigation obviate the necessity for an arrest warrant or the requirement of probable cause for an arrest.

In re Scott K. (1979) 24 Cal.3d 395, 155 Cal.Rptr. 671, 595 P.2d 105, relied on by petitioner in support of his argument, is distinguishable from the case at bench. In the In re Scott K., case, a police officer searched a locked tool box belonging to the minor defendant without consent of the minor but with the consent of the minor's father. The search disclosed marijuana inside the tool box. The California Supreme Court held that the search was unlawful because it violated the minor's property rights and the minor's father had no legal right to consent to the search because he had no property interest in the tool box. In the present case, however, the police action in taking petitioner to the police station took place with the consent of both petitioner's mother and petitioner. Petitioner manifested his consent to accompanying the officers to the station by obeying his mother's direction to accompany the officers.[3]

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2. Petitioner makes no claim that he did not voluntarily accompany the officers.

3. The police action in the instant case occurred on March 8, 1979. (RT 38-39.) The opinion in In re Scott K.

Dunaway v. New York (1979) 442 U.S. 200, another case cited by petitioner, is also inapposite to the instant case. In Dunaway it was held that for purposes of the Fourth Amendment prohibition against unreasonable searches and seizures, an individual who is taken into custody by police, transported to the police station without being told he is under arrest, and detained at the police station for interrogation, is "seized" in the Fourth Amendment sense when he is involuntary taken to the police station. (Dunaway at p. 207.) However, in the present case petitioner voluntary and consensually accompanied the police officers to the station pursuant to his mother's instructions.

In view of the foregoing, petitioner was neither illegally arrested nor detained. The police officers lawfully took petitioner to the police station and, therefore, evidence of the confession petitioner made at the station was properly introduced against petitioner. To hold to the contrary surely would be an ultimate example of sparing the rod and spoiling the child.

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was filed on May 25, 1979. (See In Re Scott K., 24 Cal.3d at p. 395, 155 Cal.Rptr. at 671, 595 P.2d at 105.) The holding of In re Scott K. pertaining to the scope of a parent's right to consent to a search of his minor child's private property only applies prospectively from and after the date of the opinion in the case. (In re Joe R. (1980) 27 Cal.3d 496, 511-512, 165 Cal.Rptr. 837, 846-847, 612 P.2d 927, 936-937.) Therefore, not only is the rationale of In re Scott K. inapplicable to the police action in the case at bar, but is also under California law as well as Federal law, the action by the police was lawful.

CONCLUSION

For the foregoing reasons, it is requested that the petition for writ of certiorari be denied.

Respectfully submitted,

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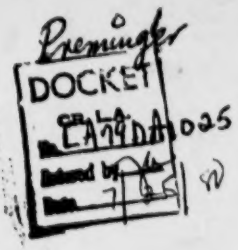
APPENDIX



2nd Crim. No. 35263

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

IN RE DAVID W., A PERSON COMING UNDER THE JUVENILE COURT LAW

PEOPLE
v.
DAVID W.

SUPREME COURT
FILED
JUL 18 1980
LAURENCE P. GILL, Clerk
Deputy

The Reporter of Decisions is directed not to publish in the Official Reports the opinion in the above entitled proceeding filed March 18, 1980 which appears at 103 Cal. App. 3d 469. (Cal. Const., Art., VI, section 14; Rule 976, Cal. Rules of Court.)

Bird
Chief Justice